

## **SHD Paraphrased Regulations - Medi-Cal**

### **420 Medi-Cal Citizenship Aliens Residency**

#### **420-1**

To be eligible under the MN or MI Programs, an applicant or beneficiary shall be a California resident, as specified in §50320, who is one of the following:

- (1) A citizen of the United States.
- (2) A national of the United States from American Samoa or Swain's Island.
- (3) An alien lawfully admitted for permanent residence.
- (4) An alien permanently residing in the United States under color of law (PRUCOL).

Certain amnesty aliens.

(§50301(b))

#### **420-2**

The CDHS has determined that it is not necessary to obtain an MC 13 (the Statement of Citizenship, Alienage and Immigration Status form) from U.S. Citizens or U.S. Nationals if an applicant makes that declaration and declares his or her place of birth on any form signed under penalty of perjury during the Medi-Cal application process. In addition, counties must not deny, delay or reduce Medi-Cal eligibility for failure to provide an MC 13 if an applicant or beneficiary claims U.S. Citizenship or U.S. National status and provides information about his or her place of birth on any form signed under penalty of perjury as part of the Medi-Cal application process. (All-County Welfare Directors Letter No. 03-14, April 11, 2003)

#### **420-3**

For Medi-Cal eligibility purposes, persons born in any of the following locations are U.S. Citizens:

- > The 50 states
- > The District of Columbia
- > Puerto Rico
- > Guam

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- > The U.S. Virgin Islands
  
- > The Northern Mariana Islands

If an applicant declares U.S. Citizenship or U.S. National status and declares a birthplace outside of the United States, counties are still required to verify citizenship or U.S. National status in accordance with §50301.1. If proof of United States citizenship is not readily available, the county may contact the Medi-Cal Eligibility Branch for assistance.

(All-County Welfare Directors Letter No. 03-14, April 11, 2003)

422-4

State law provides as follows:

- (a) Aliens shall be eligible for Medi-Cal, whether federally funded or state funded, only to the same extent as permitted under federal law and regulations for receipt of federal financial participation under Title XIX of the Social Security Act, except as otherwise provided in this section and W&IC §14007.7.
  
- (b) In accordance with §1903(v)(1) of the federal Social Security Act (42 U.S.C. §1396b(v)(1)), and except as otherwise provided in this section, an alien shall only be eligible for the full scope of Medi-Cal benefits, including, but not limited to, renal dialysis and long-term care, if the alien has been lawfully admitted for permanent residence, or is otherwise permanently residing in the United States under color of law.

For purposes of this section, aliens "permanently residing in the United States under color of law" shall be interpreted to include all aliens residing in the United States with the knowledge and permission of the Immigration and Naturalization Service and whose departure the Immigration and Naturalization Service does not contemplate enforcing and with respect to whom federal financial participation is available under Title XIX of the Social Security Act.

- (c) Any alien whose immigration status has been adjusted either to lawful temporary resident or lawful permanent resident in accordance with the provisions of §210, 210A, or 245A of the federal Immigration and Nationality Act, and who meets all other eligibility requirements, shall be eligible only for care and services under Medi-Cal for which the alien is not disqualified pursuant to those sections of the federal act.

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- (d) Any alien who is otherwise eligible for Medi-Cal services, but who does not meet the requirements under subdivision (b) or (c), shall only be eligible for care and services that are necessary for the treatment of an emergency medical condition and medical care directly related to the emergency as defined in federal law, and for medically necessary pregnancy-related services. For purposes of this section, the term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:
- (1) Placing the patient's health in serious jeopardy.
  - (2) Serious impairment to bodily functions.
  - (3) Serious dysfunction to any bodily organ or part. It is the intent of this section to entitle eligible individuals to all inpatient and outpatient services that are necessary for the treatment of an emergency medical condition as certified by the attending physician or other appropriate provider and in the same manner as administered under §51056 of Title 22 of the California Code of Regulations. Covered services include continuation of medically necessary inpatient hospital services and follow-up care, as determined by the Department, which is directly related to the emergency.
- (e) Pursuant to §14001.2, each county department shall require that each applicant for, or beneficiary of, Medi-Cal, including a child, shall provide his or her social security number account number, or numbers, if he or she has more than one social security number.
- (f) (1) In order to be eligible for benefits under subdivision (b) or (c), an alien applicant or beneficiary shall present alien registration documentation or other proof of satisfactory immigration status from the United States Immigration and Naturalization Service.
- (g) (1) The county department shall grant only the Medi-Cal benefits set forth in subdivision (d) of this section and W&IC §14007.7 to any individual who, after 30 calendar days or the time it actually takes the county to process the Medi-Cal application, whichever is longer, has failed to submit documents constituting reasonable evidence indicating a satisfactory immigration status for Medi-Cal purposes, or who is reported by the Immigration and Naturalization Service to lack a satisfactory immigration status for Medi-Cal purposes.
- (2) If an alien has been receiving Medi-Cal benefits based on eligibility established prior to the effective date of this section and such individual,

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upon redetermination of eligibility for benefits, fails to submit documents constituting reasonable evidence indicating a satisfactory immigration status for Medi-Cal purposes, the county department shall discontinue the Medi-Cal benefits, except for the care and services set forth in subdivision (d). The county department shall provide adequate notice to the individual of any adverse action and shall accord the individual an opportunity for a fair hearing if he or she requests one.

- (h) To the extent permitted by federal law and regulations, an alien applying for services under subdivisions (b) and (c) shall be granted eligibility for the scope of services to which he or she would otherwise be entitled if, at the time the county department makes the determination about his or her eligibility, the alien meets either of the following:
  - (1) Has not had a reasonable opportunity to submit documents constituting reasonable evidence indicating satisfactory immigration status.
  - (2) Has provided documents constituting reasonable evidence indicating a satisfactory immigration status, but the county department has not received timely verification of the alien's immigration status from the Immigration and Naturalization Service.
  - (3) The verification process shall protect the privacy of all participants. An alien's immigration status shall be subject to verification by the Immigration and Naturalization Service, to the extent required for receipt of federal financial participation in the Medi-Cal Program.
- (i) If an alien does not declare status as a lawful permanent resident or alien permanently residing under color of law, or as an alien legalized under §210, 210A, or 245A of the federal Immigration and Nationality Act (Public Law 82-414), Medi-Cal coverage under subdivision (d) of this section and W&IC §14007.7 shall be provided to the individual if he or she is otherwise eligible.
- (j) If an alien subject to this section is not fluent in English, the county department shall provide an understandable explanation of the requirements of this section in a language in which the alien is fluent.
- (k) Aliens who were receiving long-term care or renal dialysis services (1) on the day prior to the effective date of the amendment to paragraph (1) of subdivision (f) of Section 1 of Chapter 1441 of the Statutes of 1988 at the 1991-92 Regular Session of the Legislature and (2) under the authority of paragraph (1) of subdivision (f) of Section 1 of Chapter 1441 of the Statutes of 1988 as it read on June 30, 1992, shall continue to receive these services. The authority for continuation of long-term care or renal dialysis services in this subdivision shall

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not apply to any person whose long-term care or renal dialysis services end for any reason after the effective date of the amendment described in this subdivision.

(Welfare and Institutions Code §14007.5, as revised effective July 22, 1999)

#### 422-4A

Any alien who is otherwise eligible for Medi-Cal services but who does not meet the requirements under W&IC §14007.5(b) or (c) shall be eligible for medically necessary pregnancy-related services. (W&IC §14007.7, effective July 22, 1999)

#### 422-7

Effective October 1, 1996 there are new requirements for declarations as to citizenship/immigration status and Social Security Number (SSN) requirements. These procedures, summarized briefly below, implement Welfare & Institutions Code (W&IC) §14011.2, as interpreted by the California Court of Appeal, App. 1, in *Crespin v. Coye* (1994) 27 Cal.App. 4th 700, 34 Cal. Rptr. 2d 10.

- (1) Every person requesting Medi-Cal is required to provide information about his/her citizenship/immigration status by completing the MC 13;
- (2) Every person requesting Medi-Cal, who at the time of application, has an SSN, is asked to provide it. However, aliens eligible only for restricted Medi-Cal benefits are not required to provide an SSN as a condition of eligibility, including aliens who claim on the MC 13 that they are not in a satisfactory immigration status (SIS);
- (3) Medi-Cal applicants may no longer request full or restricted Medi-Cal benefits. Counties will make such determinations.

(ACWDL No. 96-53, September 17, 1996 modifying ACWDL No. 96-34, June 27, 1996)

#### 422-8

Spouses and unmarried children of an alien legalized under the Immigration Reform and Control Act (IRCA) are "eligible immigrants" and (pursuant to §301 of the Immigration and Nationality Act (INA) of 1990) may be granted a stay of deportation pending adjustment of immigration status. These eligible immigrants (who are PRUCOL persons) are subject to the five-year moratorium which limits Medi-Cal benefits to emergency and pregnancy-related services. The immigrant must be otherwise eligible for Medi-Cal. If the legalized alien is aged, blind, disabled or under 18, there is no limitation on services. (All-County Welfare Directors Letters No. 93-14, March 1, 1993 and 93-49, July 22, 1993)

#### 423-2

Once California residence is established it continues until residence is established in another state or country. (§50320(e))

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#### **423-3**

California residence is a requirement for Medi-Cal. The adult applicant must be: physically present and living in California with the intention to remain permanently or for an indefinite period; or be physically present, living in California and entered the state with a job commitment or to seek employment. In addition, the verification requirements of §50320.1 must be met. (§50320(a))

#### **423-3A**

Children living with their parents shall have their residence determined as that of their parents, except non-California resident parents may establish California residence for their children if the parents intend for their children to remain in California on a nontemporary basis and the parents have made arrangement for the children independent of the parents. (§50320(c))

#### **423-4**

In addition to the applicant's declaration of residence on the Statement of Facts, both of the following conditions must be met:

- (1) The applicant produces one of the following:
  - (A) A current California rent or mortgage receipt or utility bill in the applicant's name bearing the current address of the applicant.
  - (B) A current and valid California driver's license with the applicant's name and current address.
  - (C) A current and valid California motor vehicle registration with the applicant's name and current address.
  - (D) A document showing the applicant is employed in this state.
  - (E) A document showing that the applicant has registered with an employment service in this state.
  - (F) Evidence that the applicant has enrolled his or her children in a school in this state.
  - (G) Evidence of receipt of public assistance, other than Medi-Cal, in this state.
  - (H) Evidence of voter registration in this state.
  - (I) An applicant's declaration under penalty of perjury that he or she lacks any of the above verification. (The county must then consider other verification as referred to in §50320.2) AND

- (2) The applicant declares under penalty of perjury that all of the following apply:

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- (A) He/she does not maintain a principal residence outside this state. If the applicant contends an out-of-state principal residence is exempt property, evaluate under §50320.2(c).
- (B) The applicant is not receiving public assistance (which does not include UIB) from another state.

(§50320.1(a))

#### **423-5**

The Administrative Law Judge shall not determine that a Medi-Cal applicant is a California resident unless a preponderance of the credible evidence supports either: The applicant intends to remain indefinitely in this state; or the applicant is a resident on the basis of the laws governing residency in the Medi-Cal Program. (§50320.2(f))

#### **423-6**

A person's declaration on the Medi-Cal Statement of Facts, together with the evidence required in §50320.1, shall be accepted for purposes of establishing residence unless there is evidence to the contrary. (§50320(f))

The CDHS position is that "evidence to the contrary" is any information that contradicts applicants' claims that they are residents of California. Examples of contrary evidence are information or documents which show the person:

1. Entered California for a temporary purpose, such as a visit.
2. Had plans to leave the State to return to another state or country (e.g., a return airline ticket) and had not established California residency.
3. Had a spouse or minor children living in another state or country who lived with the person prior to his/her arrival in California.
4. Entered California to obtain medical care, or was granted a short term legal entry to obtain such care.
5. Possessed a Border Crossing Card, or any visa of a temporary nature.
6. Operated a business, or maintained a home outside California.
7. Had motor vehicles registered outside California.
8. Had children attending school outside California.
9. Received public benefits from another state or country.

This evidence is not determinative, but must be weighed against all other evidence to determine California residency. Facts supporting or undermining California residency

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claims, and the reasoning involved, should be noted in the case file. (All-County Welfare Directors Letter No. 96-27, May 24, 1996)

#### 423-6A

The CDHS had informed counties that they were to consider possession of a Border Crossing Card as conclusive evidence that the holder of the card is not a California resident for Medi-Cal purposes. (All-County Welfare Directors Letter (ACWDL) No. 97-06, February 18, 1997) One reason for this CDHS position was because the Immigration and Naturalization Service (INS) issues such cards to aliens who must affirm to the INS that they intend to return to their residence in the other country. (ACWDL No. 95-47, August 23, 1995)

On August 11, 1998, the California Court of Appeal ordered "the trial court...to issue a peremptory writ of mandate directing respondents [the CDHS] not to utilize, enforce or attempt to enforce the regulation set forth in ACL [actually All-County Welfare Directors Letter (ACWDL)] 97-06 unless and until the requirements of the APA [Administrative Procedures Act] are met." *Latino Coalition for a Healthy California v. Belshé et al.*, California Court of Appeal, First Appellate District, Division Two, No. A081229, August 11, 1998)

The CDHS instructed counties not to apply ACWDL 97-06, effective immediately, in determining the residence of Medi-Cal applicants or beneficiaries. (ACWDL No. 98-48, October 30, 1998)

On February 4, 1999, the San Francisco County Superior Court ordered the CDHS to inform counties that ACWDL No. 97-06 and all directives from that ACWDL are void. The CDHS was further ordered to require counties to identify, to the extent possible, all individuals denied or discontinued from Medi-Cal based on non-residency from February 18, 1997 through October 30, 1998 and to notify those individuals of the right to apply for retroactive assistance for benefits lost due to the imposition of the requirements set out in ACWDL No. 97-06.

To be eligible for these retroactive benefits, the claim must be filed on or before December 31, 2000, and benefits must have been denied or discontinued solely because of possession of a valid and current border crossing card or short term visa. (ACWDL No. 99-45, September 16, 1999)

#### 423-6B

Persons possessing B-1/B-2 visas are permitted entry into the United States for purposes of visiting this country temporarily for business or pleasure.

In the years 1996 and 1997, the CDHS position was that persons possessing such visas were to be considered nonresidents of California by the counties.

(ACWDL No. 96-27, May 24, 1996, modified by ACWDL No. 97-06, February 18, 1997)

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attempt to enforce the regulation set forth in ACL [actually All-County Welfare Directors Letter (ACWDL)] 97-06 unless and until the requirements of the APA [Administrative Procedures Act] are met." (*Latino Coalition for a Healthy California v. Belshé et al.*, California Court of Appeal, First Appellate District, Division Two, No. A081229, August 11, 1998)

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#### 423-6C

State law requires that Administrative Law Judges make determinations of residency as follows:

"A denial of a determination of residency may be appealed in the same manner as any other denial of eligibility. The Administrative Law Judge shall receive any proof of residency offered by the applicant and may inquire into any facts relevant to the question of residency. A determination of residency shall not be granted unless a preponderance of the credible evidence supports the applicant's intent to remain indefinitely in this state."

(W&IC Section 14007.1(b))

#### 425-1

Individuals who are inmates of public institutions are not eligible for Medi-Cal. (§50273(a))

The following are considered inmates of a public institution.

(1)-(4) Individuals in a prison, or city, county, or tribal jail, including:

Those who have not yet been arraigned, convicted or sentenced.

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Those who are incarcerated, but can leave the prison or jail on, e.g., work release or work furlough but must return at specific intervals.

Those who are released from prison or jail only because of a medical emergency.

(5)-(8) Minors who are:

In a juvenile detention center prior to judgment due to the minor's criminal activity.

Placed, after disposition, in a detention or correctional facility which is part of the criminal justice system.

Placed on juvenile intensive probation with specific conditions of release, or ordered to a secure treatment facility, which is part of the criminal justice system, by a juvenile court.

(§50273(a)(1)-(a)(8))

#### **425-2**

State regulations provide that individuals between the ages of 21-65 who are in an institution for mental diseases (IMD) shall be considered inmates of a public institution until they are unconditionally released. As such, they are not eligible for Medi-Cal.

(§50273(a)(9))

#### **425-2A**

State law provides that inpatient services provided to individuals from 21 to 64 years of age, in an IMD operating under a consolidated license with a general acute care hospital pursuant to §1250.8 of the Health and Safety Code, shall not be eligible for Medi-Cal benefits unless federal financial participation (FFP) is available for such inpatient services. (W&IC §14053(c), as amended effective July 22, 1999)

#### **425-2B**

Under former state law, despite the provisions of W&IC §14053, ancillary outpatient services (per W&IC §14132) were covered for any eligible individual who was 21 years of age or over, and who was not yet 65 years old, when that person was a patient of an IMD. FFP was not required. (W&IC §14053.1, effective July 22, 1999, and repealed effective July 1, 2001)